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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.912 OF 2007

Ramprasad Shivchandrai Ruia ..Petitioner

Vs.

The Municipal Corporation of
Greater Mumbai & 8 others ..Respondents

Mr. O.S. Kutty with Ms. Anila Vanjara, for the Petitioner.
Ms. S.M. Modale, for respondent Nos 1 and 5.
Mr. Gautam Patel with Mr. Hemant Sethi for respondent No.9.

CORAM: F.I. REBELLO &
J.P.DEVADHAR,JJ.
DATED: 8TH AUGUST, 2007

P.C.:

. The petitioner has approached this Court contending that the respondent No.9 had put up illegal construction and respondent Nos. 1 and its officers are not taking any action.

2. We find that one Shyamsundar Shivchandrai Ruia had filed L.C. Suit No.5507 of 1989 in which the petitioner No.2 as well as respondent No.9 were parties. One of the issues framed in the suit was "Whether the plaintiff can join prayer for demolition of illegal construction on the terrace in the suit". The dispute of illegal construction is the same. The learned Judge in para.62 while answering Issue No.7 observed that the plaintiff seeks to demolish the illegal construction put up by Shri Bajranglal on the 2nd floor of Hari Niwas as

well as on the outhouse in the compound. In para.64 the learned Judge proceeded on the footing that the suit in respect of such construction filed in 1989 is clearly barred by law of limitation. The petitioner No.2 who claims interest in the property and who was defendant No.3 in that suit has already preferred an appeal which is pending before this Court.

3. The petitioner has now approached this Court on the contention that based on a communication issued by the Corporation under No.DMC ZIII/9247 dated 8th August, 2003 whereby the petitioners infact were informed that considering the judgment of the Civil Court that the notices are deemed to have been dropped.

4. In our opinion, once the very issue was considered by the learned Civil Court which has passed a judgment, the only remedy available to a party aggrieved is to prefer an appeal. In the instant case the petitioner No.2 has preferred an appeal.

. In our opinion, therefore, the present petition is clearly a misuse of the judicial process. In the light of the above, petition dismissed with costs quantified in a sum of Rs.5,000/- in favour of respondent No.1.

(J.P. DEVADHAR, J.) (F.I. REBELLO, J.)